UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN

In re: DEREK D. VAN ASTEN and KAITRYN A. VAN ASTEN, Debtors.	Case No. 15-31239-GMH (Chapter 7)

PATRICK S. LAYNG United States Trustee, Plaintiff, v. DEREK D. VAN ASTEN and KAITRYN A. VAN ASTEN, Defendants.	Adversary Case No.

COMPLAINT BY THE UNITED STATES TRUSTEE TO REVOKE THE DEBTORS' DISCHARGE

NOW COMES the United States Trustee Patrick S. Layng, by Attorney Laura D. Steele, who, pursuant to 11 U.S.C. §§ 727(e) and (d), requests that the Court revoke the Defendants' discharge, and states as follows:

I. JURISDICTION

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 157(b)(2)(J) and § 1334. This is a core proceeding, and the United States Trustee consents to final judgment of the Court.

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2. The United States Trustee has standing to file this proceeding under 11 U.S.C. § 307 and 11 U.S.C. § 727(d).

3. Venue for this proceeding is in the United States Bankruptcy Court for the Eastern District of Wisconsin pursuant to 28 U.S.C. § 1409(a).

4. This action arises under 11 U.S.C. §§ 727(e)(1) and (2), §§ 727(d)(1) and (2) and Fed. R. Bankr. P. 4005 and 7001(4).

II. PARTIES, PROCEDURAL HISTORY AND CASE ADMINISTRATION

5. The Plaintiff, Patrick S. Layng, is the United States Trustee for the Eastern District of Wisconsin and maintains an office at 517 East Wisconsin Avenue, Suite 430, Milwaukee, Wisconsin.

6. Derek D. Van Asten and Kaitryn A. Van Asten (the Defendants) resided at E6752 Handrick Lane, Clintonville, WI 54929 as of the October 7, 2015 petition date.

7. Upon information and belief, the Defendants currently reside at 300 Walnut Street, Rolfe, IA 50581.

8. The Defendants received their Chapter 7 discharge on February 2, 2016. Docket No. 31.

9. The Court closed this case on September 16, 2016.

10. On January 10, 2017, the United States Trustee filed a motion to reopen this case for the reasons detailed within this Complaint.

11. The Complaint is timely because it is filed within one year after the Court granted the Defendants' discharge. 11 U.S.C. § 727(e).

III. FACTUAL BACKGROUND

12. The Defendants commenced their Chapter 7 proceeding on October 7, 2015 as Case No. 15-31239.

The Defendants' schedules

13. The Defendants caused their petition, schedules, and statement of financial affairs to be prepared with the assistance of their counsel, Attorney Richard Check.

14. The Defendants signed the petition, schedules, and statement of financial affairs under penalty of perjury.

15. Defendant Derek Van Asten disclosed within his schedules that he is self-employed as a dairy farmer. Docket No. 13, Schedule I.

16. The Defendants operate Van Asten Dairy as a sole proprietorship.

17. The Defendants' Schedule I states $1,291 in monthly income derived from the dairy farm operation.

18. Property disclosed on the Defendants' Schedule B includes:

    a. $1,000 in cash on hand;

    b. $168 held in a Premier Community Bank checking account;

    c. $758 held in a Premier Community Bank business checking account;

    d. Inventory including dairy drugs $1,000, milk $10,000, semen tank $1,000, semen tank inventory $2,500, calf hutches (10) $3,000;

    e. Cows – owned (21); and

    f. Cows- SunRise group 39 ($66,300) - leased.

19. Schedule D discloses that the 21 owned cows are subject to security interests of the Shawano Farm Service Agency, Huckleberry Capital, and First State Bank.

20. Schedule D also discloses that the Schedule B inventory is subject to security interests of the Shawano Farm Service Agency, Huckleberry Capital, and First State Bank.

21. Schedule C does not exempt any cows.

22. Schedule C does not exempt any inventory.

23. The Defendants attached to their schedules lists of items sold pre-petition. Docket No. 13 at pg. 35-38.

24. Among the items sold pre-petition are 173 cows described as "owned by SSH."

25. "SSH" stands for Sunshine Heifers LLC, from whom the Defendants leased cows.

26. The sales of the SSH cows occurred between June 27, 2014 and September 28, 2015.

27. SSH filed an adversary complaint seeking a determination that the Defendants' debt to SSH is non-dischargeable because the Defendants sold the leased cows without SSH's authorization. Adversary Case No. 16-2046-gmh.

28. SSH prevailed on its complaint.

29. The list also discloses the pre-petition sale of 43 cows described as "owned by Debtors."

30. The sales of the Defendants' cows occurred between April 28, 2014 and October 5, 2015.

31. No further cow sales are disclosed within the schedules or statement of financial affairs.[1]

The § 341 meeting of creditors

32. The Defendants appeared at the 11 U.S.C. § 341 meeting of creditors on December 2, 2015.

33. Trustee Liebzeit placed the Defendants under oath.

34. The Defendants testified that all of their assets and debts were disclosed within their schedules and statement of financial affairs.

[1] The Defendants filed an amended statement of financial affairs ("SOFA") on December 4, 2015. Docket No. 20. In response to question 18, which requests disclosure of the sale, trade or transfer of property within two years of the petition date, the amended SOFA states "Various Buyers—See attached." However, the amended SOFA does not include any attachments.

35. The Defendants further testified that no changes or corrections were necessary to their schedules.

36. Trustee Liebzeit noted that it appeared that "everything on the farm is secured."

37. The Defendants agreed with Trustee Liebzeit's statement that everything on the farm is secured.

38. Creditor First State Bank appeared by their attorney at the meeting of creditors.

39. First State Bank inquired whether the Defendants still had possession of the 21 cows listed in the schedules and in which First State Bank had a security interest.

40. Defendant Derek Van Asten replied "Yes."

41. On February 1, 2016, Trustee Liebzeit filed a report of no distribution representing that there was no property available for distribution from the estate over and above that exempted by law.

42. The Debtors received a Chapter 7 discharge on February 2, 2016. Docket No. 31.

43. The Court closed the Chapter 7 case on September 16, 2016.

Post-petition cow sales

44. On November 18, 2016, the United States Trustee obtained information that the Defendants sold cows after their October 7, 2015 petition date.

45. Further, the United States Trustee obtained documents showing that the Defendants received at least $10,188.67 in proceeds from the post-petition cow sales.

46. The United States Trustee had no knowledge of the Defendants' post-petition sale of cows and receipt of proceeds until November 18, 2016.

47. The Defendants' bank records show that, post-petition, the Defendants sold at least 15 cows to livestock firms.

48. The livestock firms then issued checks in the name of the Defendants' minor child at the address of N4496 County Road J, Kaukauna, WI, 54130 (hereinafter, the Kaukauna, WI address).

49. Defendant Derek Van Asten's parents, Dennis J. Van Asten and Rebecca L. Van Asten, reside at the Kaukauna, WI address used on the checks.

50. The Defendants then endorsed the checks and either cashed or deposited the checks at Premier Community Bank, where they held their banking accounts.

51. For example, the following checking transactions are found within the Defendants' bank records:

   a. *November 16, 2015 check:*

      i. On November 16, 2015, Equity Cooperative Livestock Sales Association (P.O. Box 1003, Baraboo, WI, 53913) ("Equity Cooperative") issued a check to the Defendants' minor child at the Kaukauna, WI address in the amount of $1,006.53.

      ii. Defendant Derek Van Asten endorsed the November 15, 2015 check issued from Equity Cooperative.

      iii. On November 17, 2015, Defendant Derek Van Asten cashed the $1,006.53 check at Premier Community Bank.

   b. *November 23, 2015 check:*

      i. On November 23, 2015, Equity Cooperative issued a check to the Defendants' minor child at the Kaukauna, WI address in the amount of $753.44.

      ii. Defendant Derek Van Asten endorsed the check.

iii. On November 24, 2015, Defendant Derek Van Asten deposited $753.44 into the Premier Community Bank account ending *857.

iv. The Premier Community Bank account ending *857 is held in the name of "Kaitryn A. Van Asten and Derek D. Van Asten D/B/A Van Asten Dairy."

v. Upon information and belief, Premier Community Bank account ending *857 is the Defendants' business checking account.

c. *November 30, 2015 check:*

i. On November 30, 2015, Equity Cooperative issued a check to the Defendants' minor child with the Kaukauna, WI address in the amount of $1,116.96.

ii. Defendant Derek Van Asten endorsed the check.

iii. On December 1, 2015, Defendant Derek Van Asten deposited $96.96 into Premier Community Bank account ending *857 and took the remaining $1,020 in cash.

iv. The Defendants appeared at their meeting of creditors the following day, on December 2, 2015.

v. The Defendants did not disclose the receipt of proceeds from the post-petition cow sales during the meeting of creditors.

d. *December 14, 2015 check:*

i. On December 14, 2015, Equity Cooperative issued a check to the Defendants' minor child with the Kaukauna, WI address in the amount of $808.93.

ii. Defendant Derek Van Asten endorsed the check.

iii. On December 15, 2015, Defendant Derek Van Asten deposited $808.93 into Premier Community Bank account ending *857.

e. *December 16, 2015 check:*

i. On December 16, 2015, Equity Cooperative issued a check to the Defendants' minor child at the Kaukauna, WI address in the amount of $1,500.80.

ii. Defendant Kaitryn Van Asten endorsed the check in "care of" the minor child.

iii. On December 16, 2016, Defendant Kaitryn Van Asten cashed the $1,500.80 check at Premier Community Bank.

f. *December 21, 2015 check:*

i. On December 21, 2015, Equity Cooperative issued a check to the Defendants' minor child at the Kaukauna, WI address in the amount of $1,369.21.

ii. Defendant Derek Van Asten endorsed the check as "father."

iii. On December 21, 2015, Defendant Derek Van Asten deposited $1,369.21 into Premier Community Bank account ending *857.

g. *January 4, 2016 check:*

i. On January 4, 2016, Equity Cooperative issued a check to the Defendants' minor child at the Kaukauna, WI address in the amount of $561.28.

ii. Defendant Derek Van Asten endorsed the check as "father."

iii. On January 5, 2016, Defendant Derek Van Asten cashed or deposited the $561.28 check at Premier Community Bank.

52. The United States Trustee reviewed the Patron Activity Reports of Equity Cooperative for the periods of January 1, 2015 through December 31, 2015 and January 1, 2016 through November 22, 2016.

53. The Patron Activity Reports show that Equity Cooperative paid a total of $10,188.67 to the Defendants' minor child from November 9, 2015 through November 22, 2016.

54. The Patron Activity Reports show that the proceeds resulted from the sale of 15 cows to Equity Cooperative between November 9, 2015 and January 27, 2016.

55. The Defendants used the cow sale proceeds for their personal purposes.

56. The Defendants did not disclose the post-petition cow sale proceeds to Trustee Liebzeit.

Post-petition inventory sales

57. Also on November 18, 2016, the United States Trustee obtained information that the Defendants sold various inventory items after their October 7, 2015 petition date.

58. The Defendants received at least $3,700 in proceeds from the post-petition inventory sales.

59. For example, the following checking transactions are found within the Defendants' bank records:

   a. *February 5, 2016 check:*

      i. On February 5, 2016, Dennis Van Asten (father) issued a personal check to his son in the amount of $1,150.

      ii. The February 5, 2016 check includes the memo line description: "2 semen tanks + semen."

      iii. Upon information and belief, the items described in the memo line comprise the Defendants' pre-petition inventory.

      iv. Defendant Derek Van Asten endorsed the check from his father on February 5, 2016.

v. Defendant Derek Van Asten then cashed or deposited the $1,150 check at Premier Community Bank.

b. *April 12, 2016 check:*

i. On April 12, 2016, Equity Cooperative issued a check to Defendant Derek Van Asten with his parents' Kaukauna, WI address in the amount of $2,551.25.

ii. Defendant Derek Van Asten endorsed the check on April 14, 2016.

iii. Defendant Derek Van Asten either cashed or deposited the check at Heritage State Bank in Missouri.

iv. Upon information and belief, Defendant Derek Van Asten relocated to Missouri in or about April 2016.

v. The United States Trustee reviewed the consignment agreement with Equity Cooperative associated with the April 12, 2016 check.

vi. Defendant Derek Van Asten is listed as the seller on the consignment agreement.

vii. The consignment agreement includes a notation that the check should be sent to Defendant Derek Van Asten's father.

viii. The description of items consigned includes:

(1) 9 calf hutches ($1,575)

(2) 3 bags channel seed corn in container ($75)

(3) Bale fork ($400)

(4) Pallet fork ($650)

(5) 2 calf tell calf pens ($175)

60. The Defendants represented to Trustee Liebzeit that the inventory that they later sold post-petition was fully encumbered as of the petition date.

61. The Defendants did not disclose the post-petition inventory sale proceeds to Trustee Liebzeit.

62. The Defendants used the inventory sale proceeds for their personal purposes.

63. The United States Trustee did not have knowledge of post-petition inventory sales until November 18, 2016, after the Court granted the Defendants' discharge.

IV. ALLEGATIONS

Count I: Transfer and concealment of property

64. All of the preceding paragraphs are realleged and incorporated herein by reference.

65. The Defendants obtained their discharge through fraud.

66. The Defendants' schedules, signed under penalty of perjury, assert that their farm assets were fully encumbered by creditors' security interests.

67. The Defendants' farm assets, including cows and inventory, are property of the estate. 11 U.S.C. § 541.

68. The Defendants further testified under oath at the meeting of creditors that their farm assets were fully encumbered and that, if liquidated, no equity would result for the estate.

69. Despite knowing that the cows and inventory were fully encumbered, the Defendants sold the cows and inventory after filing their petition.

70. The Defendants received at least $13,800 in proceeds from the post-petition sale of the cows and inventory.

71. The Defendants concealed the cow sales and receipt of proceeds from creditors by listing their minor child as the payee and by using the mailing address of Defendant Derek Van Asten's parents.

72. The Defendants concealed the inventory sales to Equity Cooperative and receipt of proceeds by using the mailing address of Defendant Derek Van Asten's parents.

73. Accordingly, the Defendants, with intent to hinder, delay, or defraud creditors and the Chapter 7 trustee, transferred and concealed property of the estate.

74. The United States Trustee did not know of the Defendants' fraud until after the Court granted the Defendants a discharge.

75. The foregoing provides grounds for the Court to revoke the Defendants' discharge pursuant to 11 U.S.C. §§ 727(d)(1), 727(e)(1), and 727(a)(2).

Count II: False oaths

76. All of the preceding paragraphs are realleged and incorporated herein by reference.

77. The Defendants testified under oath at the meeting of creditors that they still had possession of the 21 cows listed within their schedules, and that such cows were fully encumbered.

78. Equity Cooperative's records show that the Defendants sold at least seven cows between the petition date and the meeting of creditors, generating nearly $4,500 in proceeds.

79. The Defendants knew that they had sold the cows when they testified at the meeting of creditors.

80. Accordingly, the Defendants knowingly and fraudulently made a false oath when they represented they still had possession of the 21 cows at the meeting of creditors.

81. The foregoing provides grounds for the Court to revoke the Defendants' discharge pursuant to 11 U.S.C. §§ 727(d)(1), 727(e)(1), and 727(a)(4).

Count III: Failure to report and deliver property to the chapter 7 trustee

82. All of the preceding paragraphs are realleged and incorporated herein by reference.

83. The Defendants sold cows and inventory post-petition.

84. The Defendants received at least $13,800 in proceeds from the post-petition sales.

85. The post-petition sale proceeds are property of the estate. *See* 11 U.S.C. § 541(a)(6).

86. The Defendants directed that the proceeds be issued in the name of their minor child and sent to the address of Defendant Derek Van Asten's parents, rather than their own, in an effort to conceal the sales.

87. The Defendants knowingly and fraudulently failed to report the receipt of the sales proceeds to the Chapter 7 trustee.

88. The Defendants knowingly and fraudulently failed to deliver or surrender the sale proceeds to the Chapter 7 trustee.

89. The foregoing provide grounds for this Court to revoke the Defendants' discharge pursuant to §§ 727(d)(2) and 727(e)(2).

WHEREFORE, Plaintiff requests that the Court revoke the Defendants' discharge and for such other relief as is just and equitable. The United States Trustee reserves the right to supplement the complaint after conducting discovery.

Dated: January 10, 2017.

RESPECTFULLY SUBMITTED:

PATRICK S. LAYNG
United States Trustee

Laura D. Steele

Digitally signed by Laura D. Steele
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LAURA D. STEELE
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